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No. 504

Supreme Court of the United States

OCTOBER TERM, 1957

GERTRUDE MACDONALD

v.

LA SALLE NATIONAL BANK, Conservator

Appeal from the Supreme Court of Illinois

Statement as to Jurisdiction

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Evanston, Illinois

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Opinion Below.

The opinion of the Supreme Court of Illinois in the above entitled cause is reported in *Macdonald* v. *La Salle National Bank*, 11 Ill. (2d) 122, and a copy of the opinion of the Supreme Court of Illinois is appended to this Jurisdictional Statement.

Jurisdiction.

On May 13, 1955, Gertrude Macdonald filed, in the Probate Court of Cook County, Illinois, a petition to vacate and set aside the appointment of conservators of her estate, said appointment being void and the Probate Court having no jurisdiction. Rec. 3 (5-14). On June 22, 1955, the Probate Court of Cook County, Illinois, dismissed the petition and an appeal was taken to the Circuit Court of Cook County, Illinois. Rec. 3 (15). On June 27, 1956, the Circuit Court of Cook County dismissed and denied the petition of Gertrude Macdonald. (Rec. 3 (17-24)). From the order of the Circuit Court of Cook County an appeal was prosecuted to the Supreme Court of Illinois. (Rec. 3 (25)).

On March 20, 1957, the Supreme Court of Illinois entered judgment, affirming the judgment of the Circuit Court of Cook County, Illinois, a copy of which judgment is appended to this Jurisdictional Statement. Rec. 8. On April 4, 1957, a petition for rehearing was filed, Rec. 9-13, and said petition for rehearing was denied by the Supreme Court of Illinois on May 20, 1957. Rec. 14. On August 1, 1957, Gertrude Macdonald filed in the Supreme Court of Illinois a notice of appeal to the Supreme Court of the United States. Rec. 15-18.

This appeal is taken pursuant to Title 28 of the United States Code, Section 1257(2).

Validity of Statute Involved.

There is herein involved Sections 1 and 52 of "An Act to revise the law in relation to incompetents, idiots, lunatics, drunkards and spendthrifts" which was in existence in 1938. Said Sections of the statute (Illinois Revised Statutes, 1937, Chapter 86, Sections 1 and 53) read as follows:

"Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: When any person having any estate, real or personal, shall be, or be supposed to be, an insane person, who, by reason of unsoundness of mind, is incapable of managing and caring for his own estate, or when any person having any estate shall be, or be supposed to be a drunkard or spendthrift or otherwise incompetent, as defined in this Act the County Court of the county wherein such person resides, or if such person resides out of this State and has an estate within this State, then, the County Court of the county where his real estate or a part thereof may lie, or if such non-resident has no real estate in this State then the County Court of the county where he may have personal property, shall, on the proper petition of any reputable citizen of such county, for the appointment of a conservator of the person or estate (or both) of such person, proceed in the manner hereinafter provided, to ascertain whether such person be an insane person, who, by reason of unsoundness of mind, is incapable of managing and caring for his own estate, a drunkard, spendthrift or incompetent as aforesaid: Provided, that in any county wherein a Probate Court is or hereafter may be established, such application shall be made to said Probate Court."

"Section 52. The words "insane person," as used in this Act, shall include every idiot, non compos, lunatic, feeble minded, distracted or mentally incompetent person. The words "spendthrift," as used in this Act shall include every person, who, on account of excessive drinking, excessive use of drugs, gaming, idleness or debauchery, is incapable of managing and caring for his estate or so spends, wastes or lessens his estate as to expose himself or his family to want or suffering. *The word "incompetent", as used in this Act, shall include every person who by reason of any mental or physical incapacity or incompetency is incapable of managing and caring for his estate.*

> The word "drunkard," as used in this Act, shall include every person, who, on account of excessive drinking of intoxicants is incapable of managing and caring for his estate, or so spends, wastes or lessens his estate, so as to expose himself or his family to want or suffering." (Italics supplied).

The validity of the italicized sentence is to be determined by this Court.

Question Presented.

Is the statutory provision of the State of Illinois that a conservator may be appointed for any person who by reason of any "physical incapacity or incompetency is incapable of managing and caring for his estate" unconstitutional, being in violation of "due process of law," as guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States?

Statement.

On March 5, 1938, a petition was filed in the Probate Court of Cook County, Illinois, by one Annabelle G. Hansen, praying that a conservator be appointed for the estate of Gertrude Macdonald and alleging:

> "That said Gertrude Macdonald is an incompetent person and wholly incapable of managing said estate or transacting business incident to the management, control and operation of certain properties to which she may be or become entitled." Rec. 3 (1-2).

On the date the petition was filed Gertrude Macdonald was served with a summons Rec. 3 (3).

No appearance or answer was filed by or on behalf of the said Gertrude Macdonald in the Probate Court of Cook County and as the record shows the judgment was entered by default— (Rec. (3))

On March 9, 1938, four days after the petition was filed, the following verdict, signed by six jurors, was rendered:

> "We the undersigned Jurors in the case of Gertrude Macdonald, alleged to be an incompetent person, having heard the evidence in the case, find from such evidence that the said Gertrude Macdonald is an incompetent person, that she is a resident of Cook County, and is incapable of managing and controlling her estate; that she is aged about 30 years." Rec. 3 (4).

On the same day, March 9, 1938, an entry was made by the Probate Court of Cook County "Judgment on the verdict." Rec. 3 (4).

The petition praying for the appointment of a conservator did not allege and the verdict of the jury and judgment of the Probate Court of Cook County thereon did not find that Gertrude Macdonald was either an idiot, lunatic, insane, or distracted person, or a person whose mind was impaired by the habitual use of intoxicating liquors. Rec. 3 (7).

On March 9, 1938, the Probate Court of Cook County appointed the Metropolitan Trust Company as conservator of the estate of Gertrude Macdonald. Rec 3 (7). On October 26, 1938, James Macdonald was appointed as successor conservator. Rec. 3 (4) and on September 15, 1951, James Macdonald was removed and the LaSalle National Bank was appointed as successor conservator. Rec. 3 (5).

The petition of Gertrude Macdonald, filed May 13, 1955, states that the petition of Annabelle G. Hansen, filed on March 5, 1938, praying for the appointment of a conservator for the estate of Gertrude Macdonald did not allege and the verdict of the jury and judgment of the Probate Court of Cook County thereon did not find that Gertrude Macdonald was either an idiot, lunatic, insane, or distracted person, or a person whose mind was im-

paired by the habitual use of intoxicating liquor Rec. 3 (7); that the petition of Annabelle G. Hantsen merely alleged and the jury merely found that Gertrude Macdonald was an incompetent person incapable to manage her estate Rec. 3 (5-6); and that the statute which provides that a conservator may be appointed for any person who by reason of any "physical incapacity or incompetency is incapable of managing or caring for his estate "is unconstitutional, being in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States of America. Rec. 3 (10-11).

The Amended Petition of Gertrude Macdonald, which was filed in the Probate Court of Cook County, among other things alleged, Rec. 3 (10-11):

> "Because of the provisions of Section 20 of Article 6 of the Illinois Constitution of 1870 and by virtue of Section 2 of Article 2 of the Illinois Constitution of 1870 and Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, the Probate Court of Cook County did not have jurisdiction to appoint a conservator of the person or estate of Gertrude Macdonald, and the appointments by the Probate Court of Cook County of conservators were and are void *ab initio*, and all of the acts and doings of the said appointed conservators are null and void, for the following reasons:
>
> * * * * *
>
> (d) No conservator may therefore be appointed by the Probate Court of Cook County unless there is an allegation and a finding that the person for whom a conservator is to be appointed is an idiot, lunatic, insane, or distracted person, or a person whose mind is impaired by the habitual use of intoxicating liquors.
>
> (e) Since there was neither alleged nor found that Gertrude Macdonald was an idiot, lunatic, insane, or distracted person, or a person whose mind was impaired by the habitual use of intoxicating liquors, the

Probate Court of Cook County did not at any time have jurisdiction to appoint a conservator for Gertrude Macdonald.

(f) In the year 1919, the Illinois Legislature, for the first time in the history of Illinois, provided by statute that a conservator may be appointed for any person who by reason of any "physical incapacity or incompetency is incapable of managing and caring for his estate." This statutory provision is contrary to Section 2 of Article 2 of the Illinois Constitution of 1870 and Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, both of which guarantee that no person shall be deprived of life, liberty or property without due process of law. Because of the mere presence of a physical incapacity, the State of Illinois may not deprive a person of his right (1) to make contracts, (2) to act through agents of his own choice, and (3) to deal with his property as he may see fit, and the State of Illinois may not place the property of a physically incapacitated person under the control of a conservator who is appointed without the consent of the property owner and who may deal and dispose of the property without consulting the property owner."

This Circuit Court of Cook County, Illinois, dismissed and denied the petition of Gertrude Macdonald and expressly ruled, Rec. 3 (23), that "None of the statutes complained of in the amended petition of Gertrude Macdonald, filed in the Probate Court May 13, 1955, violate any of the provisions of the Constitution of the State of Illinois nor of the Constitution of the United States." The Supreme Court of Illinois affirmed the judgment of the Circuit Court of Cook County, Illinois. Rec. 8.

The opinion of the Supreme Court of Illinois states that Gertrude Macdonald "lived fourteen years in an institution for the feeble minded", Rec. 6, but fails to state that "her stay there was voluntary as a part time employe and

not under commitment of any court or under the care and treatment of the welfare department of the State of Illinois." Rec. 13.

The Federal Question is Substantial.

The Illinois statutory provision that a conservator may be appointed for any person who by reason of any "physical incapacity or incompetency is incapable of managing and caring for his estate" is unconstitutional, being in violation of "due process of law" as guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Illinois, in its opinion Rec. 8 assumed that the Probate Court of Cook County, Illinois in 1938 declared Gertrude Macdonald to be incapable of caring for and managing her estate because, (1) "both of the trial judges who saw her in 1955 and 1956 expressed doubt as to her mental ability to handle her affairs," (2) "she lived fourteen years in an institution for the feeble-minded," (3) "nowhere in the record was it suggested that she had any physical disability." (See Petition for Rehearing Rec. 12-13.)

The Probate Court of Illinois had no jurisdiction to adjudge Gertrude Macdonald an incompetent person because of mental illness in order to appoint a conservator for her estate unless she had *first* been deprived of her civil liberties as a result of a finding of mental illness by a county court of Illinois under the provisions of the Mental Health Act, Chap. 91½ of the Illinois Revised Statutes, or unless she had been declared mentally ill by a foreign court of competent jurisdiction. (See petition for Rehearing Rec. 12-13)

In the year 1919, the Illinois Legislature, for the first time in the history of Illinois, provided by statute that a

conservator may be appointed for any person who by reason of any "physical incapacity or incompetency is incapable of managing and caring for his estate" Rec. 3(11), which terminology and description is wholly outside the definition of mental illness which renders a person incapable of managing and caring for his own estate under the Mental Health Act, Chap. 91½ Sec. 8 of Art. I of the Illinois Revised Statutes.

By mandate of Section 20 of Article VI. of the Constitution of the State of Illinois which limits the jurisdiction of the Probate Courts to the appointment of conservators and the settlement of their accounts and by virtue of Section 18 of Article VI. of the State Constitution which grants to the county courts other jurisdiction which may be provided by general law, the county courts and *not* the probate courts have original and exclusive jurisdiction over the subject matter of depriving persons, not charged with crime, of their liberty on the grounds of mental illness. Chap. 91½ of the Illinois Revised Statutes, designated as the Mental Health Code, entitled,

> "AN ACT to revise the law in relation to the commitment, admission, detention, care and treatment of mentally ill persons, mentally deficient persons and persons in need of mental treatment; to provide for the licensing and regulation of private institutions for the care of mentally ill persons, mentally deficient persons and persons in need of mental treatment; and to repeal certain Acts therein named."

Provides that,

> Art. I. Section 1-8. "Mentally Ill Person", when used in this Act, means any person afflicted with mental disease to such an extent that for his own welfare, or the welfare of others or of the community, he requires care, treatment, detention and training, and which renders him *incapable of caring for and managing his own estate;* provided that, except as is other-

wise provided with respect to persons under the control of the Youth Commission, nothing in this Act shall be construed to apply to any mentally ill persons, or person supposed to be mentally ill, who is in custody on a criminal charge. (As amended by act approved June 30, 1953)

Art. II Section 2-2. "Jurisdiction over the persons of mentally ill persons and persons in need of mental treatment, not charged with crime, is hereby vested in the County Courts of the several counties of the State."

Art. III Sec. 3. No person shall be deprived of his liberty on the grounds that he is, or is supposed to be, mentally ill, mentally deficient, or in need of mental treatment, except in accordance with the provisions of this Act.

Art. V. Court commitment.
Art. VI. Emergency Admission—Detention.
Art. VII. Restoration—Discharge—Habeas Corpus
Art. IX. Maintenance and Treatment, etc.
Art. XII. Penalties.
Art. XV. Repeal.
Art. XVI. Saving Clause.

In view of the above law, Gertrude Macdonald, therefore, was confined to the proposition that she had been declared an incompetent and incapable of caring for and managing her estate by the Probate Court of Cook County, on the grounds of "physical incapacity" in pursuance of the Statute, Sections 1-53 of Chapter 86 which authorizes the Probate Court to appoint a conservator for such a person.

Physical incompetency is constitutionally not sufficient for the appointment of a conservator.

In *Schaefer* v. *Haller*, 108 Ohio State 322, involving the constitutionality of the Ohio Statute which provides that a person may be declared an incompetent either for mental or physical deficiencies, the lower court found "*the*

plaintiff in error to be competent mentally, but physically incompetent, to care for his property." The Supreme Court of Ohio held the statute unconstitutional, and said beginning at page 325:

"Section 10989 reads, in part:

'Upon satisfactory proof that a person resident of the county, or having legal settlement in any township thereof, is an idiot or imbecile, or lunatic, or an incompetent by reason of advanced age or mental or physical disability or infirmity, the probate court shall appoint a guardian for such person.'

In the discharge of its obligation to so interpret each enactment of the Legislature as to make it conform to the provisions of the Constitution of the state and federal government, this court has endeavored to construe Section 10989, General Code, so as to qualify the word "incompetent" by the word "mentally"; but by reason of the fact that the Legislature has made its own classification of persons subject to guardianship under this provision, and, in addition to idiots, imbeciles, and lunatics, has made a general classification under the comprehensive term "incompetent", and has furnished its own definition of the word "incompetent", by declaring such to be a person "incompetent by reason of advanced age," "incompetent by reason of * * mental * * * disability or infirmity," "incompetent by reason of * * * physical disability or infirmity," and has distinguished between mental incompetency and physical incompetency, and made each a ground for the appointment of a guardian, this court cannot by any process, other than by an arbitrary disregard of the language of the section itself, arrive at the conclusion that the Legislature did not intend to make a person suffering from a physical disability alone an incompetent within the provisions of this section. The majority of the court being of that opinion, the court is confronted with the second question propounded above.

"The practice of the state exercising a paternal supervision over the property of persons mentally in-

competent to exercise such supervision for themselves has existed in some form or other since the foundation of government among men. Without going into a history of the various forms of guardianship which have prevailed in the various jurisdictions of the world, it is sufficient to say that, in so far as we have been able to discover, the guardianship of property has always and everywhere been confined to the guardianship of the property of persons mentally incapable of managing such property—incapable either by reason of infancy or by reason of lack or impairment of intellect; the theory being that the acquisition of property constitutes an act of the will, that a person acquires property either by the exercise of his own will to dominate exclusively an animate or inanimate object, which is under the domination of no person, and thereby subjects such object to his will, and therefore makes such object his property, or, by the exercise of his will in conjunction with the exercise of the will of the person who already dominates such object, receives a transfer of such domination from the person who theretofore exercised such domination, and that where a person either by reason of his infancy has not attained the power to exercise his will or by reason of a defect from birth never has and never can have the will to exercise, or by reason of accident or disease has lost the power to exercise his will, the state, in the exercise of its sovereignty, supplies to such through the medium of a guardian the mental attribute which such person has not yet attained, will never have, or has for the time being lost.

"Blackstone has described property as the 'sole and despotic domination which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.' (Blackstone's Commentaries, book 2, ch. 1, p. 2.) While this definition, in the light of present-day situations, would necessarily have to be rather liberally construed, it states the essential characteristic of property. Woerner in his American Law of Administration (2d Ed.), Section 1, states:

'My property is that which is mine. That only is mine which I acquire, hold, and dispose of by my will. It is my will which determines the acquisition of a thing by me, whether originally, by reducing to possession, and thus making my property that which was no one's property before, or by contract, by which a thing becomes mine through the concurrence of my will with that of its former owner.''

And in Section 4 he states:

'Property, then, is the realization of the free will of a person, the external sphere of his freedom. As such, it partakes of, and is clothed with, the dignity and inviolability of the person. The things which constitute property can have no rights, for they have no will; and will alone, or the person in which it has its abode and vehicle, can be the subject of right and of its correlative, duty. The law recognizes and deals with property only in so far as it recognizes and deals with the will of the owner, realized or externalized therein.'

In Section 3 he states:

'Alienability is of the essence of property; an infringement of my right or power to alienate my property is therefore a limitation upon my free will, and to that extent a violation of my personal liberty, because my free will finds realization in property. The infraction of my personal freedom is precisely the same if a limitation is put upon my power to alienate property as if I were prevented from acquiring, or from holding or using it. The limitation would in either case deprive me of my power to contract, and thus destroy my liberty.'

''It thus follows that the function of the state in exercising a guardianship over the property of one of its defective subjects, whether defective by reason of age, birth, accident, or disease, arises out of the fact that such defective is lacking in the power to exercise his will, which we have come to term ''mental capacity to manage,'' and not out of lack of physical ability to care for, control, develop, and utilize.

"The existence of the power to exercise the will, the mental capacity to manage, implies the ability to employ or secure some one physically able to perform the tasks set, and if the power to exercise the will, the mental capacity to manage exists, that function can be performed as well by a person physically incapacitated as by a guardian, for it is not contemplated by Section 10989, General Code, that the guardian shall perform the physical labor necessary for the utilization and enjoyment of the property, but that out of the proceeds of the estate of the ward such physical labor shall be employed; and, since a ward "competent mentally, but physically incompetent," possesses the mental capacity to manage, and therefore the mental capacity to employ or secure some one possessing physical capacity to carry out his will, all reason for the substitution for his mental capacity to manage of the mental capacity of a guardian to manage disappears.

"Section 1, Article I, of the Constitution of Ohio, guarantees to all persons within its borders:

'Certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property.'

"There being no sound reason for the provision of Section 10989, General Code, that makes physical disability or infirmity a ground for the appointment of a guardian of the property of a person mentally competent, but physically incompetent, the provision is an unwarranted abridgment of the liberty of such person, and an unwarranted abridgment of his right to acquire, possess and protect property, and therefore in violation of Section 1, Article I, of the Constitution."

It is respectfully submitted that the decision of the Supreme Court of Ohio is sound and does apply to the instant case and that this Honorable Court ought to follow that decision in its interpretation of "due process of law" under the Federal Constitution.

If the decision of the Supreme Court of Illinois is allowed to stand, then there is no standard as to who shall and who shall not be adjudged an incompetent and every citizen is in jeopardy of being declared an incompetent even though he or she is not an insane or mentally ill person. (See Petition for Rehearing in Supreme Court of Illinois Rec. 12-13, 3(11)).

Further, Gertrude Macdonald respectfully submits that if the Supreme Court of Illinois has decided that she was legally adjudged mentally ill, by a proceeding in the Probate Court of Cook County, Illinois, that the judiciary is exercising a legislative function in violation of the State Constitution, Article III. *Distribution of Powers* and therefore has been deprived of her liberty under a void judgment in violation of the due process clause of the fourteenth amendment to the Constitution of the United States.

In this connection it should be noted that Gertrude Macdonald was not and could not be served with a warrant to enforce her presence in the Probate Court of Cook County at the time she was adjudged incompetent and that the record is silent as to any medical findings of fact from which to establish or substantiate "mental" incompetency. (See Petition for Rehearing before the Supreme Court of Illinois Rec. 12-13, Rec. 3 (3)).

Therefore, the question remains,—without evidence of a finding of "mental" incompetency rendering a person incapable of managing and caring for his own estate, by the County Court of Cook County under the provisions of the Mental Health Code or by a court of competent jurisdiction of a foreign state—can a citizen be deprived of his civil liberties because of a mere "physical disability" of which all citizens are possessed in one way or another, if not by loss of sight, an arm or a leg—then by weakening of the organic processes?

Can such deprivation as set forth in the instant case be tolerated or considered under our Constitutional form of government, as not being in violation of fundamental rights as guaranteed under the due process clause of the fourteenth amendment to the Constitution of the United States?

CONCLUSION.

It is respectfully submitted that this Honorable Court should take jurisdiction of this appeal, since Gertrude Macdonald was deprived of her liberty contrary to "due process of law" as guaranteed to her by the Fourteenth Amendment to the Constitution of the United States and the federal question herein involved is substantial.

Respectfully submitted,

GERTRUDE MACDONALD, *pro se*

OPINION OF SUPREME COURT OF ILLINOIS.

Gertrude Macdonald, Appellant, vs. LaSalle National Bank, Conservator, et al., Appellees.

Mr. Justice Hershey delivered the opinion of the court:

After a jury trial in the probate court of Cook County, Gertrude Macdonald was found to be an "incompetent person," "incapable of managing and controlling her estate," and the court appointed a conservator for her, letters of conservatorship being issued on March 30, 1938, to the Metropolitan Trust Company. Seventeen years later, on May 13, 1955, she filed a petition in the same court, alleging that the court lacked jurisdiction to enter the previous order and asking that it be vacated and the successor conservator, La Salle National Bank, be discharged. The petitioner's position was that the statute under which the court purported to act was unconstitutional

The probate court dismissed the petition. On appeal to the circuit court, the petition was again dismissed. The appeal comes directly to this court on the theory that a constitutional question is involved.

That part of the general statute relating to the appointment of conservators to which the petitioner directs her attack reads as follows: "The word 'incompetent', as used in this Act, shall include every person who by reason of any mental or physical incapacity or incompetency is incapable of managing and caring for his estate." (Ill. Rev. Stat., 1937, chap. 86, par. 53.) She asserts that this provision authorizes the appointment of a conservator for one who is only "physically" incompetent, and is therefore violative of the due process clauses of the Federal and Illinois constitutions.

In our opinion, the petitioner is not entitled to prevail, because (1) there is nothing to show that the probate court interpreted or applied the statute in the manner alleged, and (2) the statute, properly construed, is constitutionally valid.

First, the record shows strict compliance with the statutory requirements regarding the initial petition, the issuance and service of summons, and jury trial. Moreover, there is nothing to demonstrate that the incompetence of the petitioner was or is "physical." Indeed, the contrary is indicated. For she was found by the jury in 1938 to be "incapable of managing and controlling her estate," she lived fourteen years in an institution for the feeble minded, and both of the trial judges (who saw her in 1955 and 1956) expressed doubt as to her present mental ability to handle her own affairs. Nowhere in the record is it suggested that she has any physical disability.

Failing to show that the court undertook to adjudge her incompetent because of a physical incapacity, she fails to show wherein the alleged statutory defect adversely affected her.

Second, the provision, properly construed, is constitutionally valid.

The test which is universally applied in determining judicially whether a conservator should be appointed is whether the person is capable of managing his own affairs. (See *e.g.; Snyder* v. *Snyder,* 142 Ill. 60; *Kutzner* v. *Meyers,* 182 Ind. 669; *In re Coburn,* 162 Cal. 202; *In re Thoreson's Guardianship,* 72 N. Dak. 101, 4 N. W. 2d 822; *Appeal of Hogan,* 135 Maine 249; 194 Atl. 854; *Appeal of Wente,* 76 Conn. 405, 56 Atl. 625; *Shapter* v. *Pillar,* 28 Colo. 209, 63 Pac. 302; *In re Barker,* (N. Y.) 2 Johns Ch. 232;

Calderon v. *Martin*, 50 La. Ann. 1153, 23 So. 909). The statute under consideration adopts this test also, since it provides expressly that before "mental or physical incapacity or incompetency" is sufficient to permit the appointment of a conservator it must render the person "incapable of managing and caring for his estate."

Courts have traditionally intervened, either on the basis of inherent judicial authority or pursuant to statutory authorization, to protect those unable to protect themselves; *i.e.*, those who are incapable of caring for themselves or managing their own affairs. (ee, *e.g.*, 25 Am. Jur., Guard and Ward, sec. 23; 28 Am. Jur., Insane and other incompetent Persons, sec. 25). In recognition of this, the Illinois constitution authorizes the legislature to establish probate courts having "original jurisdiction of * * * the appointment of guardians and conservators," (art. VI, sec. 20); and the Illinois legislature has provided for such courts. Moreover, the legislature has from time to time established various procedures, incorporating in some form the test discussed above, to guide probate courts in the exercise of this necessary judicial function. The validity of statutes of this type has repeatedly been upheld against constitutional objections.

For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

Judgment Affirmed.

Judgment of Supreme Court of Illinois.

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.